

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF PHELPS GAS COMPANY, )	
INC., FOR A RATE ADJUSTMENT PURSUANT )	
TO THE ALTERNATIVE RATE FILING )	CASE NO. 9911
PROCEDURE FOR SMALL UTILITIES )	

O R D E R

On April 9, 1987, Phelps Gas Company, Inc., ("Phelps") filed an application seeking to increase its rates pursuant to the Alternative Rate Filing Procedure for Small Utilities to become effective for service rendered on and after May 9, 1987. On April 20, 1987, the Commission suspended the proposed rates for 5 months on and after May 9, 1987.

The Attorney General, by and through his Utility and Rate Intervention Division ("AG"), and Columbia Gas of Kentucky, Inc., ("Columbia") filed motions to intervene in this proceeding. The Commission subsequently ordered that these motions be granted.

On June 15, 1987, Columbia filed a motion requesting that the Commission impose a surcharge upon the rates and charges of Phelps or, in the alternative, to authorize termination of service. The Commission's ruling on this motion is discussed in a subsequent section of this Order.

On July 29 and 30, 1987, the Commission staff conducted a field examination of Phelps' financial records. On September 22, 1987, the staff issued a report containing its recommendations.

On October 12, 1987, Phelps filed a response concerning this report; however, this response did not directly address the merits of staff's recommendations.

On October 9, 1987, the Commission issued an Order finding that it would be unable to complete its investigation within the 5-month suspension period and that Phelps had complied with the statutory provisions to place the rates proposed in its April 9, 1987, application into effect. Phelps was ordered to maintain its records in such a manner that would allow the determination of the increased amount collected in the event a refund would be ordered upon final resolution of this matter.

On October 23, 1987, the Commission, on its own motion, scheduled a hearing for November 18, 1987, to hear testimony and consider other evidence in this matter. All parties of record participated in the public hearing and briefs were filed by January 4, 1988.

#### SURCHARGE

In its original application, Phelps proposed an expense adjustment of \$19,386 which would provide sufficient revenues to extinguish past-due billings owed to Columbia in 1 year. At the time of the filing, Phelps' arrearage to Columbia stood at approximately the same amount as the proposed adjustment. In the alternative, Phelps proposed that the Commission provide for recovery of the arrearage to Columbia through the imposition of a surcharge. On June 15, 1987, Columbia filed a motion requesting that the Commission impose a surcharge upon the customers of Phelps,

with amounts collected via the surcharge to be used to extinguish the arrearage.

The AG opposed collection of the arrearage from the ratepayers of Phelps and recommended to the Commission that the staff report be adopted. The AG further argued that the arrearage arose as a result of the management policies of Phelps and, thus, should not be recovered from the ratepayers. Lastly, the AG recommended that this Commission Order should contain requirements to prevent the arrearage from recurring.

In its report filed September 22, 1987, staff concluded that upon implementation of its recommended rate increase, Phelps would generate cash flow from operations sufficient to repay its arrearage to Columbia within a 2- to 3-year period. Based upon the staff's analysis, the recommended increase would be \$11,477, and would provide positive cash flow from operations in the amount of \$9,325 annually.

Staff further maintained the position that the amount to be recovered through the surcharge represents past operating costs which should not be considered in determining the current rates of Phelps', especially since these particular costs are passed through the purchased gas adjustment clause and this would be the second time the customers would be paying for this cost.

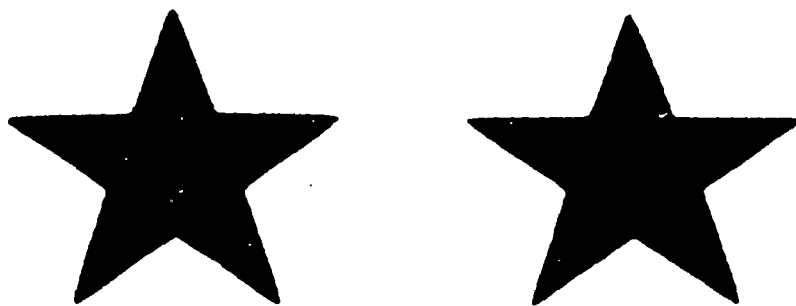
The Commission concurs with staff's position with regard to the surcharge and believes that without a conclusive showing that recovery of past costs through current rates is justified due to prevailing circumstances, such recovery is inappropriate. The Commission finds that there has been no such justification in this

proceeding. Phelps, via rate proceedings and the Purchased Gas Adjustment process, previously has been granted revenues adequate to allow it the opportunity to meet its reasonable operating expenses, with an additional provision for profits. Consequently, revenues have already been recovered from the ratepayers to cover these expenses from the regulatory viewpoint as contemplated by the Commission when setting rates. In setting rates, the Commission does not guarantee a profit. The record does not reflect that previous rates were inadequate to provide sufficient revenues to meet the reasonable opportunity objective, so a surcharge to recover past losses should not be retroactively imposed upon the ratepayers of Phelps.

The Commission notes that Phelps has a long history of accumulating arrearages to its gas supplier. In November 1982, the Commission granted Phelps a surcharge of \$2 per month plus \$0.51 per month for a period not to exceed 24 months or until total revenues of \$44,890 had been collected. This surcharge was also for the purpose of extinguishing arrearages to Columbia. Having been granted sufficient rates initially, and with additional revenues generated via this surcharge, Phelps has had ample opportunity to avoid this historical trend of repeatedly failing to make proper payment to Columbia.

Furthermore, the Commission is concerned at Phelps' apparent disregard of past Orders, with specific attention to the recent

# **CORRECTION**



***PRECEDING IMAGE HAS BEEN  
REFILMED  
TO ASSURE LEGIBILITY OR TO  
CORRECT A POSSIBLE ERROR***

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Furthermore, the Commission is concerned at Phelps' apparent disregard of past Orders, with specific attention to the recent

Order in Case No. 9877 dated July 16, 1987.<sup>1</sup> At that time the Commission directed that Phelps,

...should treat Columbia as a priority creditor to contain the arrearage to no more than its present level and attempt to negotiate a satisfactory settlement of the arrearage.<sup>2</sup>

Without seeking a deviation from this Order, Phelps has failed to make any payments to Columbia subsequent to its issuance. Such blatant disregard of the Commission's Orders presents the appearance that Phelps has no intentions of acting in good faith in attempting to solve this ongoing arrearage problem. As a result of this noncompliance, the arrearage has grown from \$22,447 as of July 1987, to \$35,479 as of the date of the November hearing in this case. Payments of even a nominal amount during this time would have given the Commission an indication that Phelps was at least being somewhat cooperative in this effort to solve the arrearage problem. As a result of Phelps' response to the July 16, 1987, Order, the Commission must, at best, conclude that there is a good chance that if a surcharge were granted it would not be used for the intended purpose. Phelps' actions have proven to be counterproductive to a solution of its ongoing arrearage problems.

Based upon the foregoing, the Commission finds that the burden for repayment of the arrearage should not be imposed upon

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<sup>1</sup> Phelps Gas Company's Failure to Comply with Commission Regulations and Delinquent Purchased Gas Account with Columbia Gas of Kentucky, final order entered July 16, 1987.

<sup>2</sup> Ibid., page 4.

the ratepayers of Phelps, but rather, should be borne by its owners.

Based upon this determination, the Commission finds that Columbia's June 15, 1987, motion to impose a surcharge upon the rates and charges of Phelps should be denied. Moreover, the Commission finds that in consideration that the rates granted herein will provide Phelps with sufficient cash flow to extinguish the arrearage, the alternative motion to terminate service should also be denied.

The Commission is of the opinion that it must impose strict monitoring requirements of Phelps' financial condition to assure the continued operation of the utility. Therefore, Phelps should be required to submit monthly operating statements containing sufficient information to show all receipts and disbursements. It should be made clear in these statements that Columbia is the priority vendor and shall receive payment of its monthly gas bill and the agreed-upon repayment of its past-due account on or before the due date. Failure of Phelps to adhere to this requirement may result in the imposition of fines as provided in KRS 278.990.

#### REVENUE REQUIREMENTS

In its report, staff recommended a revenue increase of \$11,477. This recommendation grants essentially the entire rate increase requested by Phelps exclusive of recovery of the arrearage to Columbia. No substantive objections were raised to the staff report other than those concerning the recommended disallowance of the recovery of the arrearage.

Therefore, after careful review of the recommendations made by staff, the Commission is of the opinion that the recommended increase in revenue of \$11,477 will allow Phelps ample opportunity to pay its operating expenses, negotiate a payment schedule with Columbia to repay the arrearage, and provide for reasonable equity growth. Therefore, the Commission accepts staff's finding that the annual increase of \$11,477 should be allowed.

#### RATE DESIGN

The operating revenue of \$122,046 and miscellaneous revenues of \$1,369 for total revenues of \$123,415 is based upon the rates and charges as proposed by Phelps in this case and includes the allowed increase of \$11,477. In its Order on October 9, 1987, the Commission recognized that the determination of the revenue increase in this case would not meet the statutory provisions and allowed Phelps to place the proposed rates, including the surcharge, into effect. On October 14, 1987, in Purchased Gas Adjustment ("PGA") Case No. 9911-A, Phelps filed an application to decrease its rates by \$0.4664 per Mcf, which decreased the operating revenue by \$8,165. Therefore, PGA Case No. 9911-A should be incorporated into the operating revenues and total revenues in this Order. The adjusted operating revenues and total revenues of \$113,881 and \$115,250 incorporate the \$8,165 adjustment and the rates and charges in the attached Appendix A should produce operating revenues of \$113,881.

#### REFUND

Upon expiration of the 5-month suspension period, the Commission on October 9, 1987, found that it would be unable to

complete its investigation within the 5-month suspension period and that Phelps had complied with the statutory provisions to place the proposed rates into effect. The Commission further ordered that Phelps should maintain its records in such manner as would allow determination of any amounts to be refunded in the event one is ordered upon final resolution in this matter.

Inasmuch as rates charged since October 9, 1987, have included provision for recovery of past-due gas purchases, and such recovery has been found to be inappropriate herein, the Commission finds that all sums collected in excess of the rates found to be reasonable herein should be refunded to Phelps' customers with interest.

IT IS THEREFORE ORDERED that:

1. The rates and charges requested by Phelps be and they hereby are denied.
2. The rates and charges in Appendix A are the fair, just, and reasonable rates and charges to be charged by Phelps on and after the date of this Order.
3. The June 15, 1987, motion by Columbia is hereby denied.
4. Phelps shall begin good faith negotiations to arrive at an agreement with Columbia within 30 days of the date of this Order. The detailed results of these negotiations shall be filed with the Commission within 45 days of the date of this Order.

5. Phelps shall submit monthly operating statements to the Commission within 30 days of the last day of each month showing all receipts and an itemization of disbursements made during that month. Each monthly filing shall also contain a copy of the billing from Columbia, a showing of the amount paid to Columbia for the current bill and the amount applied to the arrearage; and any additional information the staff may deem appropriate to determine Phelps' compliance with this Order.

6. Within 20 days of the date of this Order Phelps shall file with this Commission the amount of excess revenues collected.

7. Within 20 days of the date of this Order Phelps shall file its refund plan not to exceed a period of 60 days using a refund interest rate of the average of the "3-Month Commercial Paper Rates" less 1/2 of 1 percent to cover the cost of refunding. These monthly rates are reported in the Federal Reserve Bulletin and the Federal Reserve Statistical Release and can be obtained from the Commission.

8. Within 20 days from the date of this Order, Phelps shall file with this Commission its revised tariff sheets setting out the rates approved herein.

Done at Frankfort, Kentucky, this 8th day of February, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Hemeny  
Chairman

Robert M. Davis  
Vice Chairman

James N. Williams  
Commissioner

ATTEST:

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Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE  
COMMISSION IN CASE NO. 9911 DATED 2/8/88

The following rates are prescribed for the customers served by Phelps Gas Company, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of the Commission prior to the effective date of this Order. The rates and charges stated herein have incorporated PGA 9911-A.

RATES: Monthly

First 1 Mcf	\$7.80	Minimum Bill
Over 1 Mcf	6.1336	Per Mcf

The base rate for the future application of the purchased gas adjustment clause of Phelps Gas Company, Inc., shall be:

	<u>Commodity</u>
Columbia Gas of Kentucky, Inc.	\$3.5939 Per Mcf